

455.0000 RECORDS—Regulation 1698

Confidentiality of, see also Confidential Information. Government, furnished copies of, see also Service Enterprises Generally.

455.0015 Acceptability of Facsimile (FAX) Documents. The problem that arises when considering the acceptability of faxed documents is that while the Evidence Code states: “A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail” there is no comparable presumption for fax transmissions. With respect to the filing of an application for a seller’s permit, there is no specific authorization for the Board to accept faxed filings. If one is received, it becomes business records and must be authenticated by the party signing the application.

Notarized documents cannot be accepted via fax transmission because a notary is required by Government Code section 8207 to “authenticate with the official seal all notarial acts,” and a faxed copy is not under the notary’s official seal. 8/18/92.

455.0100 Cash Register. Use of a cash register by a taxpayer is not absolutely required if cash registers are not ordinarily maintained by the average prudent business person engaged in the activity in question. The taxpayer must nevertheless devise a bookkeeping system sufficient to show sales and purchases. 5/24/94.

455.0300 Gasoline Suppliers Account Number. The listing of a gasoline supplier’s “SG” account number is not mandatory on the dealer’s return on which a claim for credit on prepaid tax is made by the dealer. However, if the retailer does not have the sufficient documentation to support the credits it claims and the Board cannot verify them, the retailer’s claim for credit would be denied. 5/24/94.

455.0750 Records to Show Rented Property Is Tax-Paid. Although Sales and Use Tax Regulation 1698 authorizes the destruction of records after four years, that does not apply to records needed to show that rented property was purchased tax-paid. It is the taxpayer’s burden to show that tax does not apply to current rental receipts. 2/25/75.

455.0770 Reliance on Board Advice. Section 6596 has application only to situations in which a person has reasonably relied on written advice from the Board sent in response to a written request as described in section 6596(b)(1) and, based on such reliance, has failed to obtain reimbursement for the expense of the sales or use tax. It does not apply to relief from penalties or interest except as those charges relate to tax being canceled or refunded under the conditions expressed in the section. (Relief from penalty and interest under other conditions may be obtained under section 6592.) Additionally, section 6596 applies only to the taxability of a fully described activity or transaction. It does not provide the Board equity powers over issues such as the measure of tax, tax rate, calculation errors, and audit procedures. 8/14/89.

455.0785 Right to Subpoena Audit Records. A taxpayer has refused to make its books and records available for audit unless the auditor allowed the taxpayer to videotape all audit work discussions.

As a policy matter, Board auditors do not request subpoena for books and records unless there has been a refusal on the part of the taxpayer to cooperate with the audit staff. In this case, the taxpayer appears to be placing conditions or limitations on the right of the Board and its audit staff to perform its statutorily mandated function. There is no provision of law which would allow a taxpayer to videotape any audit discussion or which would allow a taxpayer to condition cooperation in an audit on the ability to videotape the discussion. As long as the taxpayer continues to insist on the right to videotaping as a precondition to the availability of its books and records, the taxpayer has in effect refused to cooperate with the audit staff and has not made its records available as required by law.

Government Code section 15613 does not require, as a precondition to the issuance of a subpoena, that the taxpayer refuses to provide its books and records to the Board. As such, the Executive Director could issue a subpoena requesting the books and records of any taxpayer whether or not the taxpayer has placed conditions on the availability of the books and records. 9/29/92.

455.0800 **Reliance on Written Advice.** Only the person making a written request for an opinion may rely upon that opinion to qualify for relief of back taxes, interest and penalties. 7/3/91.

455.0835 **Subsequent Rental After Personal Use.** A lessor leased equipment not in substantially the same form as acquired and paid use tax on its rental charges. After rental of the property, the lessor made personal use of the equipment. It was advised in a letter from the Board that the equipment would be subject to use tax measured by the cost of the equipment with credit allowed for tax previously paid for the rental of the equipment. The Board's letter did not state whether or not a subsequent lease of the equipment would be taxable. The lessor concluded that since the tax paid on the rental of the equipment far exceeded the use tax due on the cost of the equipment, it was not required to charge additional tax when the equipment was first rented to a customer after it made personal use of the equipment.

While Regulation 1660 provides that a credit for prior payment sales or use tax can be applied against tax due, the regulation also states that use tax is due on subsequent rental charges. (Regulation 1660(c)(6).)

Also, with respect to erroneous information, the lessor did not rely on what the Board stated in its response, but, rather, what the Board did not state in its response. Section 6596 requires reliance on erroneous advice from the Board, not what the Board failed to state. Therefore, taxpayer cannot be granted relief from tax liability under section 6596. 3/14/95.

455.1000 **Written Notice of Board Action.** Sending a notice of Board action to the taxpayer using the address appearing in the Board's records is full compliance with section 6486 . The only requirement is that the notice be written, placed in a sealed envelope, with postage, and addressed to the retailer at the address in the Board's records. When a taxpayer provides the Board with its chosen d.b.a., the Board may use the d.b.a. when corresponding with the taxpayer concerning the business of that d.b.a. 1/7/93.